IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.99 of 2005
RADHA KRISHNA DEITIES & ORS
Versus
VAISHNAVI ARCHITECT & ORS
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15/ 01.05.2008 Heard learned counsel for the appellants.

2. Inspite of notice sent and validly served upon the respondents and inspite of the fact that respondents no.1 to 5 series have filed their vakalatnamas and names of their learned counsel are appearing on the daily cause list, no one appears on behalf of the respondents.

3. This miscellaneous appeal has been filed by plaintiff-appellants challenging order dated 29.01.2005, by which learned Subordinate Judge-VI, Patna, rejected the application filed by the plaintiff-appellants for an order of injunction under the provision of Order 39 Rules 1 and 2 of the Code of Civil Procedure for restraining defendant-respondents no.1 and 2 from alienating or transferring the suit properties or causing any loss thereto during the pendency of the title suit, namely Title Suit No. 159 of 2001.

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4. The aforesaid title suit was filed by plaintiff-appellants for declaration of their title and also for adjudication that the defendants had no right, title or authority to construct the building and if any construction has been made, the same is illegal, unauthorized, void and without title and is fit to be demolished at the cost of the defendants and also for a direction to the defendants to hand over vacant possession of the same to the plaintiffs, failing which, possession be restored to the plaintiffs through process of the court

and also for an order of injunction restraining the defendants from making any construction over the suit land and also from transferring or encumbering the same in favour of any one else and for other ancillary reliefs.

5. It transpired that during the pendency of the suit the plaintiff-appellants filed a petition under Order 39 Rules 1 and 2, read with section 151 of the Code of Civil Procedure for an order of ad-interim injunction restraining the respondents from transferring, alienating, creating any charge upon and dispossessing the plaintiffs from the suit properties. It transpired that a rejoinder was filed on 12.02.2002 by defendants no. 3 and 4 and so also by defendants no.1 and 2 on 12.09.2002 contesting the claim of the plaintiffs. However, the learned court below by impugned order dated 29.01.2005 rejected the injunction petition on the ground that neither the plaintiffs have a prima case nor balance of convenience was in their favour nor they would suffer any irreparable loss.

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6. Learned counsel for the appellants submits that the appellants are deities installed in Dwarika Mandir, West Boring Canal Road, Patna and appellant no.2 is its Attorney appointed by the Trustees of the said Religious Trust. He further submits that the entire property in suit belongs to the Religious Trust, but the defendant-respondents have forcibly occupied the same. He further submits that three buildings have already been constructed illegally and unauthorizedly even after the order of stay passed by the Patna Regional Development Authority. He also states that the said

buildings have been constructed in such a haphazard and illegal manner without any proper plan and material that one of the said buildings, namely Block `C' has already collapsed during the first rain of the season and the remaining two are awaiting the same fate. He further states that in these circumstances the appellants have filed Title Suit No. 159 of 2001 in the court below for the reliefs mentioned above.

7. Learned counsel for the appellants further states that the appellants filed an injunction petition in the court below but the learned court below rejected the said injunction petition without realizing that prima-facie case of the plaintiff-appellants was based on valid and legal documents and only on the assumption that if constructions are made, no irreparable injury will be caused to plaintiff-appellants and that the balance of convenience does not lie in favour of the plaintiffs as they were not in possession of the suit land. He further avers that against the said order the instant appeal has been filed and during the pendency of this appeal also, the defendant-respondents are trying to alienate and sell away the remaining portion of the constructed buildings, including certain vacant areas adjacent thereto as after the collapse of one of the buildings, their misdeeds have become apparent. Hence he submits that it is necessary in the ends of justice that the respondents be restrained from alienating or encumbering the suit properties or any portion thereof.

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8. Learned counsel for the appellants has also brought on record certain important facts by way of supplementary affidavit

dated 11.05.2007 stating that Vigilance Case no.39-A/2000 was initiated by the Patna Regional Development Authority upon the complaint/objections of plaintiff-appellants and the Vice Chairman of the said Authority passed final order dated 18.11.2006 directing defendant-respondents to remove and demolish all illegal constructions made by them upon the suit land within thirty days of the order, failing which, the same was to be demolished and removed by the competent authority at the cost of the respondents. A copy of the said order has been appended as Annexure 7 to the supplementary affidavit.

9. Considering the aforesaid facts and circumstances of this case, in my view, plaintiff-appellants have made out a prima-facie case in their favour as their claim is based on registered documents, whereas the claim of defendant-respondents stands contradicted by the aforesaid facts and orders. Balance of convenience is also in favour of the plaintiffs as prima facie they have right and title over the suit properties and the constructions made by the defendants are so fragile that one of the buildings, namely Block-C could not stand even the first rain of the season and the other buildings on the suit premises constructed by the defendants are awaiting the same fate, which is bound to affect the plaintiffs adversely and cause irreparable loss to them.

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10. In the said circumstances, the impugned order of the learned court below is clearly arbitrary and perverse and is, accordingly, set aside and defendant-respondents are restrained from

alienating, encumbering or transferring or in any way damaging or causing any loss to the suit properties during the pendency of the title suit. However, these prima facie findings are only with respect to the interlocutory application and the merit of the respective claims of the parties will be finally considered at the time of hearing of the suit.

This miscellaneous appeal is, accordingly, allowed.

**MPS/** **( S. N. Hussain, J. )**

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